IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4587 of 2001
to
FIRST APPEALNo 4603 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

STATE OF GUJARAT, SPECIAL LAND ACQUISITION OFFICER
Versus
GIRISHKUMAR DAHYABHAI BAROT

---

Appearance:
MR RC KODEKAR AGP for Appellants No. 1-1/2
MR AJ PATEL for Respondents

---

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. We have heard the learned AGP Mr. R.C. Kodekar and Mr.A.J. Patel, learned counsel appearing for the respondents. Admit. Mr. A.J. Patel, learned counsel appearing for the respondents waives service of process of admission. At the request of learned counsel for the parties, these appeals are taken for final hearing.

#. These appeals are preferred under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure Code by the State against the award made by the Reference Court (2nd Extra Assistant Judge, Ahmedabad (Rural), in Land Acquisition Reference No. 2206/96 to 2223/96 on 3rd November, 1999, whereby the claimants were held entitled to get the sum of Rs. 18/= per sq. mt. as additional compensation over and above the compensation awarded by Special Land Acquisition Officer. Notification under Section 4 of the Land Acquisition Act, 1874 (hereinafter to be referred to as "the Act") was issued on 26.4.93 for the lands situated at village Detroj for Narmada Project. After following the procedure laid down, notification under Section 6 was published on 14.10.93. The claimants claimed Rs. 30/= per sq. mt. However, the Special Land Acquisition Officer awarded the sum of Rs. 1.10 and Rs. 1.65 per sq. mt. It seems that after taking into consideration the prevailing market rates, nature of land, area, level, development of acquired land, fertility of land, sale instances of nearby area etc. the amount of compensation was fixed. It appears that there was evidence with regard to the facilities available at village Detroj itself such as water, light, school, telephones, Cooperative Societies etc. It appears from the evidence that the lands were irrigated, equal in level and fertile.

#. It appears that for the crops, evidence was led to the effect that wheat, cotton, castor-seeds, Jira etc. were the main crops. Over and above that, the cultivators used to grow vegetables. It was stated before the Court that the agriculturists used to get Rs. 40,000/- to Rs. 50,000/- per year per Bigha as agricultural income after deducting 1/3rd towards the agricultural expenses. They were getting Rs. 20,000/to Rs. 25,000/- as net agricultural income per Vigha. Mr. Kodekar submitted that in the instant case, what is required to be considered is earlier sale instances and not the income. He drew our attention of the award wherein the Reference Court has referred to the award in respect of the lands acquired at village Rampur.

Notification under Section 4 of the Act was published on 1.9.83 for acquisition of lands at village Rampur. and the amount of compensation was fixed at Rs. 5.30 ps. per sq. mt. The Additional Govt. Pleader submitted that in view of award exh. 29 in respect of the lands of village Rampur, the Reference Court ought to have considered the present market value. It is also required to be noted that before the Reference Court, there was exh. 30 - another award for the lands of village Bhoyni, where notification under Section 4 of the Act was published on 22.5.86 and the Reference Court ultimately awarded Rs. 11/- per sq. mt. So far as the present case is concerned, notification under Section 4 of the Act was published on 26.4.93 and the Reference Court considering the difference, awarded Rs. 18/- by way of additional compensation.

#. The claimants have also produced on record village forms 7/12 to substantiate their say as to what they were cultivating. Village form 6 were also produced. 5 years' sale instances have also produced on the record to show as to what the cultivators would be earning. On the basis of the same index, an average was also taken out.

#. In our opinion, it is not necessary to appreciate the evidence in detail. The lands situated at village Detroj itself were acquired under the notification published under Section 4 of the Act on 17.1.94 for Narmada Project. The claimants were awarded Rs. 1.10 ps. per sq. mt. by the Land Acquisition Officer and ultimately on Reference, the Reference Court enhanced the amount considering the evidence placed on the record. The claimants were held entitled to claim Rs. 18/- per sq. mt. by way of additional compensation. Against this award made by the Reference Court, the State preferred First Appeals Nos. 2021/01 to 2034/01 and the appeals were finally heard and disposed of by the High Court. On appreciation of the evidence, the High Court dismissed the appeals and therefore, this Court is not required to investigate further as the agricultural lands situated at village Detroj having same facilities were acquired and the claimants were awarded compensation as aforesaid.

#. The Division Bench considered the proceedings with regard to the lands situated at villages Bhoyni and Rampur, whereby the agricultural lands were acquired for Narmada Canal Project. Potentiality and fertility of the lands of those nearby villages were taken into consideration being the same. Small parcels of lands or the small areas were acquired. The area of the lands acquired in the present cases ranges from 368 sq. mt.

to 8824 sq. mt.

#. Learned AGP Mr. R.C.Kodekar argued before us that the Reference Court ought to have considered the award made for the lands situated at village Rampur. He further submitted that the Reference Court ought not to have applied different yardstick to award compensation. This exercise was done earlier by Division Bench of this High Court as it is clear from the decision of the Division Bench. The Division Bench considering the material placed before it found that no interference is called for and dismissed the appeals. It is required to be noted that in view of the fact that the lands situated at the same village were acquired earlier, there is no reason as to why the the claimants should not be awarded compensation as awarded in earlier References which we have discussed hereinabove.

#. In the case of Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another [2001 AIR SCW 2417], the Apex Court pointed out with regard to distance and the nature of evidence as under.

> "So far as the other question of distance between the two classes of land, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior."

The Court further pointed out as under.

> "No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing Rs. 10/- per sq. mt. cannot be sustained."

Mr. Kodekar, learned AGP could not point out anything even to suggest that the lands are inferior in quality and nature.

#. In view of what we have stated hereinabove, these appeals are dismissed.

##. The respondents are directed to pay 50% of the compensation to the claimants within three months from today after proper verification and rest of the 50% compensation shall be paid within three months thereafter.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

*****

pirzada/-